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IN THE

Supreme Court of the United States

October Term 1967

No. 493

VICTOR E. ORIGONI,

Petitioner,

v.

BULLETIN COMPANY, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

THOMAS M. O'MALLEY
1629 K Street, N. W.
Washington, D. C. 20006

MICHAEL F. X. DOLAN
1629 K Street, N. W.
Washington, D. C. 20006

Attorneys for Petitioner

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32 Stat. 544; Feb. 1, 1907, ch. 445
34 Stat. 874] . . . . . .

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Origoni petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on May 8, 1967.

On August 7, 1967 Petitioner moved this Court for an extension of time to August 14 in which to file this Petition.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A, *infra*, pp. A 1-2) issued May 8, 1967. It is not yet officially reported. The bulletins application for permission to appeal from an interlocutory order of the United States District Court pursuant to 28 U.S.C. 1292 (b) was granted November 28, 1966. (Appendix B, *infra*, p. B 1-2). The opinion of the United States District Court for the District of Columbia (Appendix C, *infra*, pp. C 1-11) issued September 16, 1966. It is not yet officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 8, 1967 (Appendix A, *infra*, pp. A 1-2). The jurisdiction, of this court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

Whether Bulletin Company, a foreign corporation, is doing business within the District of Columbia so as to make it amenable to the jurisdiction of District of Columbia Courts.

STATUTE INVOLVED

S 13-334 D. C. Code Service on Foreign Corporations:

> (a) In an action against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, when he is absent and cannot be found, by leaving a copy at the principal place of business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.

(b) When a foreign corporation transacts business in the District without having a place of business or resident agent therein, service upon any officer or agent or employee of the corporation in the District is effectual as to actions growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the District (Dec. 23, 1963, 77 Stat. 513 Pub L 88-241 S1).

Based on D. C. Code 1961 ed. 13-103 (March 3, 1901 ch. 854 section 1537, 31 Stat. 1419; June 30, 1902 ch. 1329, 32 Stat. 544; Feb. 1, 1907 ch. 445 34 Stat. 874).

STATEMENT

A. The District Court's Findings of Fact.

This is an action for libel. The publication claimed to be defamatory is an article contained in an issue of the "Sunday Bulletin", a newspaper published in Philadelphia, in effect charging the plaintiff, an expert chemist, with divulging his employer's trade secrets to an outsider. The plaintiff resided in Vienna, Virginia, which is within the Washington Metropolitan area. There are three defendants: Bulletin Company, the publisher of the newspaper; District News Company, Inc., Washington Distributer of the Newspaper; and Drug Fair of D. C. Inc., which operates stores in the District of Columbia where this newspaper is sold. (Appendix C, *infra*, p. C-1).

The defendant Bulletin Company moved to quash service of the summons and to dismiss the complaint for lack of jurisdiction over the person. The basis of the motion is a claim that this defendant is not doing business in the District of Columbia It is a corporation organized under the laws of Pennsylvania. The defendant Bulletin maintains a permanent office in the District of Columbia and has done so for over 30 years. This

office is a suite in an office building in the downtown section of Washington, and is composed of four rooms. Its annual rent is $3,144. A staff is permanently stationed at these headquarters and consists of a chief of the Bureau, two additional reporters and a secretary. Their annual payroll is about $51,000. In addition the employees are paid expenses incurred in performance of their duties. The office is equipped with four telephones. The defendant's name is listed in the Washington telephone directory, both in the alphabetical and classified sections. Supplies for the Washington office are purchased in the District of Columbia. The activities conducted at the Washington Bureau of the Bulletin consist of gathering news and forwarding it to the main office in Philadelphia where the newspaper is edited and published. The annual telephone bill is approximately $4,500 most of which is spent on long distance calls for transmission of news from the Washington Bureau to Philadelphia.

The newspaper is sold at newsstands in the District of Columbia. During the fiscal year preceding the institution of this action, its circulation in this District amounted to 309 copies of the Sunday edition and 135 copies of the daily edition. Sales took place at newsstands within the District and to subscribers by mail. (Appendix C, *infra,* p. C-2).

The gathering and transmission of news are among the basic activities of a newspaper publisher and indispensable and fundamental to the publication of the newspaper. Thus an important part of the publisher's business is regularly and continuously conducted in the District of Columbia at the permanent office located here. (Appendix C, *infra,* p. C-3). The District Court found no discernible reason for applying a different doctrine to Bulletin as a newspaper publisher than that which governs the transactions of persons and concerns engaged in other lines of endeavor. (Appendix C, *infra,* p. C-4) It found

nothing unfair in subjecting the Bulletin Company to responding to the process of the local Courts and defending a suit here. (Appendix C, *infra,* p. C-10) On the other hand, it found that it would be burdensome to require the Petitioner to go to Philadelphia in order to seek to vindicate his rejects. (Appendix C, *infra,* p. C-10).

B. The District Court's Decision and Order.

The District Court denied the Bulletin Company's Motion to quash service of summons and dismiss the complaint. It noted that Bulletin Company relied solely on two decisions of the Court of Appeals for this circuit viz *Neely v. Philadelphia Inquirer Co.* 61 App. D. C. 344, 62 F2d 872, decided in 1932, and *Layne v. Tribune Co.* (1934) 63 App. D. C. 213 71 F. 2d 223 *cert. den.* 292 U.S. 572, decided in 1934, which held that those newspapers were not doing business in the District of Columbia, but the Court concluded that the latter cases no longer represent the law and were overruled *sub silentio* by *Fiat Motor Company v. Alabama Imported Cars, Inc.,* 110 U. S. App. D. C. 252, 254, 292 F 2d 745. The Court's conclusion was based on a study and an analysis of the developments in this field subsequent to the *Neely* and *Layne* decisions. The court noted therein the changes in the principle as to what constitutes doing business within the state on the part of a foreign corporation and the adoption of a much more liberal doctrine than that which formed the basis for the *Neely* and *Layne* decisions citing *International Shoe Company v. State of Washington* 326 U. S. 310 (1945), *Perkins v. Benguet Mining Company* 342 U. S. 437 and *MeGee v. International Life Ins. Co.,* 355 U. S. 220. The District Court also found that the changes involved in the latter three cases were followed in the District of Columbia by the Court of Appeals decisions in *Goldberg v. Southern Builders,* 87 U. S. App. D. C. 191, 184 F 2d 345

and *Fiat, supra.* Accordingly, it found that Bulletin was doing business in the District of Columbia since its contacts here were systematic and continuous, and a fundamental portion of its regular business was conducted here.

It held that Bulletin Company was doing business in the District of Columbia under the "fair play and substantial justice" test of the *International Shoe Company* case.

C. The Court of Appeals Decision.

The *Neely* and *Layne* cases were not overruled *sub silentio* and are still controlling.

REASONS FOR GRANTING THE WRIT

The holding of the Court of Appeals that *Neely* and *Layne* were not overruled misapplies the rationale of this Court's decisions in *International Shoe, Perkins v. Benguet,* and *McGee v. International Life Ins. Co.* and presents an important question respecting interpretation of the statute involved herein which this Court should decide.

1. (a) In *International Shoe,* the company was a Delaware corporation engaged in the manufacture and sale of shoes and had its principal place of business in St. Louis, Missouri. It maintained establishments in several states, but none in the State of Washington. It did not have any office and did not keep any stock of merchandise in that State. It employed a number of salesman in the State of Washington, who were under the direct supervision of the St. Louis office. These salesmen resided in Washington and were compensated by commissions based on the amount of their sales. The corporation supplied them with a line of samples, each consisting of one shoe of a pair. On occasion they rented rooms for exhibiting samples. The Supreme Court of the State of Washington found that the

corporation was doing business within that state. The decision was affirmed by this Court which held that there was no violation of due process of law in ruling that the activities of the company constituted doing business within the state. Mr. Chief Justice Stone wrote that it was sufficient if the defendant had certain minimum contracts within the state such "that the maintainence of the suit does not offend 'traditional motions of fair play and substantial justice'." (p. 316). Mr. Justice Black wrote a concurring opinion. There were no dissents.

In *Perkins v. Benguet Mining Co.*, 342 U. S. 437, 447, in which Mr. Justice Burton wrote the opinion, the defendant corporation was organized under the laws of the Phillipine Islands and owned mining property there. Its operations were halted during World War II because of the occupation of the Islands by the Japanese. In the interim, the President of the Company returned to his home in Ohio and maintained an office there where he conducted both his personal affairs and also did many things in behalf of the company, such as carrying on its correspondence, keeping its office files, and the like. The Supreme Court of Ohio held that the due process clause of the Fourteenth Amendment prohibited the Ohio Courts from exercising jurisdiction over the corporation. This Court reversed the judgment of the State Court. Mr. Justice Burton stated (p. 444) that the conception relating to the service of process on foreign corporations had been modified in recent decisions and particularly in *International Shoe Company v. State of Washington, supra.* His opinion stated:

> "Today if an authorized representative of a foreign corporation be physically present in the state of the forum and be there engaged in activities appropriate to accepting service or receiving notice on its behalf, we recognize that there is no unfairness in subjecting

> that corporation to the jurisdiction of the courts of that state through such service of process upon that representative.

In *McGee v. International Life Ins. Co.*, 355 U. S. 220, in which Mr. Justice Black wrote the opinion for a unanimous bench, a resident of California bought a life insurance policy from an Arizona insurance company, whose principal place of business was in Texas. It maintained no office and had no agents in California. The transaction was handled entirely by mail. The beneficiary of the policy brought suit against the insurance company in a California Court. Process was served by substituted service, registered mail, directed to the defendant's principal place of business in Texas. The plaintiff recovered judgment. Unable to collect it in California, the plaintiff brought suit on the judgment in a Texas court. The Texas courts refused to enforce the judgment, holding that it was void under the Fourteenth Amendment. This Court held on *certorari* that the California court had properly exercised jurisdiction over the insurance company and that, therefore, the Texas courts erred in refusing to give the judgment full faith and credit. This court indicated that a foreign corporation may be subjected to a judgment *in personam* if it has certain minimum contacts with the State, such that the maintainence of the suit does not offend "traditional motions of fair play and substantial justice" (p. 222). The opinion contains this observation:

> Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more states and may in-

> volve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity. (pp. 222-223).

An application of the standards of "fair play and substantial justice," established in the *International Shoe Company* case, to the facts herein requires the result that Bulletin Company is doing business in the District of Columbia and is subject to service of process. Bulletin's contacts with the District of Columbia included maintainence of a permanent office. There, permanently maintained by a staff of employees, in which an important part of its business and functions are transacted, and where it spends a considerable amount of money. There is nothing unfair in subjecting Bulletin to responding to the process of the local courts and defending a suit here. On the other hand, it would be burdensome to require the plaintiff, a resident of the Metropolitan Washington area, to go to Philadelphia in order to seek to vindicate his regrets.

(b). The *International Shoe Company, Perkins, and McGee* cases, *supra,* overruled the "solicitation plus," "consent" and "presence" tests of constitutional due process established in *Green v. Chicago, Burlington and Quincy Railway Company,* 205 U. S. 530 (1907); *St. Louis Southwestern Railway Company v. Alexander,* 227 U. S. 218 (1913); *International Harvester Company v. Kentucky* 234 U. S. 579 (1914); and *Philadelphia and Reading Railway Company v. McKibbin,* 243 U. S. 264 (1917). The latter four cases controlled *Neely* and *Layne* wherein the Court of Appeals interpreted the existing

statute in light of the "solicitation plus" requirement for Constitutional due process set down in *Green*. In the instant case the Court of Appeals erred by extending the *Neely* doctrine, premised on an overruled 1907 decision requiring "solicitation plus", to the facts herein, and by refusing to consider whether Bulletin Company had the minimum contacts with the District of Columbia necessary to establish jurisdiction under *International Shoe Comapny*. The statute involved is a remedial statute and should be liberally construed under prevailing constitutional requirements. The court below also erred in refusing to extend this remedial statute to newspapers, as such, on the basis that this was not in the public interest. The history and language of the statute make no exemption for newspapers. The court's ruling in this regard (See *Neely* 61 App. D. C. 334, 336) militates against the object of the statute and the spirit and letter of *International Shoe Company*. Washington, D. C. abounds in newspaper operations similar to those of Bulletin Company by American and foreign newspapers alike. To hold that these are not subject to the jurisdiction of the local courts could require an aggrieved American citizen to pursue his remedy to the far corners of the earth, and would in effect deprive him of a remedy.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

THOMAS M. O'MALLEY
1629 K Street, N. W.
Washington, D. C. 20006

MICHAEL F. X. DOLAN
1629 K Street, N. W.
Washington, D. C. 20006

Attorneys for Petitioner